IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 28TH FEBRUARY 2007 / 9TH PHALGUNA 1928

Crl.Rev.Pet.No. 647 of 2007(A)

CRA.65/2002 of ADDL. DISTRICT & SESSIONS COURT (ADHOC II), KOLLAM
CC.847/1996 of JUDL.MAGISTRATE OF FIRST CLASS, KARUNAGAPPALLY

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REVN. PETITIONER: APPELLANT/ACCUSED:

N. RAGHAVAN NAIR, AGED 55 YEARS,
RESIDING AT ILLANJIKKAL VEEDU, THUVAYOOR SOUTH,
KADAMPANADU VILLAGE, ADOOR TALUK,
PATHANAMTHITTA DISTRICT.

BY ADV. SRI.K.RAMAKUMAR
SRI.R.JAYACHANDRAN

RESPONDENTS: RESPONDENT/COMPLAINANT & STATE:
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1. SUBERKUTTY, AGED 52 YEARS,
THEKKETHIL MULLAKKERI WARD, VADAKKUMTHALA VILLAGE,
KARUNAGAPPALLY TALUK.

2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

ADDL. R3 to R6 IMPLEADED

3. RUKHIYA BEEVI, W/O. SUBAIRKUTTY,
THANIMALAYAM, MANAYIL MURI,
VADAKKUNTHALA VILLAGE.

4. SHAJAHAN, S/O. SUBAIRKUTTY,
THANIMALAYAM, MANAYIL MURI,
VADAKKUNTHALA VILLAGE,

5. SHAHIDA, D/O. SUBAIRKUTTY,
THANIMALAYAM, MANAYIL MURI,
VADAKKUNTHALA VILLAGE.

6. SHEEJA, D/O. SUBAIRKUTTY,
THANIMALAYAM, MANAYIL MURI,
VADAKKUNTHALA VILLAGE.

(ADDL. R3 to R6 IMPLEADED AS PER ORDER IN CRL. M.A. NO. 1411/07)

BY ADV. SRI.C.RAJENDRAN
SRI. AMJAD ALI, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 28/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R. UDAYABHANU, J

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CRL. R.P. NO. 647 OF 2007

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Dated this the 28th day of February 2007

O R D E R

The revision petitioner stands convicted for the offence under section 138 of the Negotiable Instruments Act and sentenced to undergo simple imprisonment for six months and to pay a compensation of Rs.74,000/- vide section 357 (3) Cr.P.C. The findings are concurrent. The contention of the revision petitioner/accused is that DW1, the complainant has mentioned, while deposing, that the date of borrowal is 02.08.1996 whereas the case is that it took place on 08.02.1996 and further that the accused had closed the account long before the alleged execution of the cheque. According to him, he had also intimated the bank manager as to the loss of the cheque leaf.

2. I find that both the courts have considered the above aspects in detail. Of course, DW1 has wrongly mentioned the date and that has been corrected in the re-examination. It appears that he was not in a composed state of mind in the dock and when cross examined he confused the dates. I find that the above is not a reason to discard the case of the complainant based on documents produced. It is settled by the decisions of the apex court which has been quoted in the decisions of the court below that the closing of the account is not a defence.

3. On a consideration of the concurrent findings of the courts below, I find no reason at all to interfere. The revision petition is liable to be dismissed at the threshold.

4. Considering the plea of the counsel for the revision petitioner, sentence is modified to imprisonment till rising of the court and to pay a compensation of Rs.74,000/- to the complainant under section 357 (3) Cr.P.C and in default to undergo simple imprisonment for three months. The revision petitioner is granted three months time from today onwards to pay the amount of compensation. He shall appear before Judicial First Class Magistrate, Karunagappally on 26.06.2007 to receive sentence.

The Crl. R.P is disposed of accordingly.

K.R. UDAYABHANU, JUDGE.

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